GREGG M. MILLAR

IBLA 83-659 Decided July 18, 1983

Appeal from a decision of Administrative Law Judge E. Kendall Clarke holding that placer mining activities should be prohibited on Yuba I and Yuba II mining claims because such operations are within a power withdrawal and would substantially interfere with other uses of the land. CA MC 95657 and CA MC 95658.

Affirmed.

1. Mining claims: Hearings -- Rules of Practice: Hearings

Where a notice of intent to hold a hearing pursuant to 30 U.S.C. § 621(b) and 43 CFR 3736.1(b), when transmitted and received by the locators of the claims at issue, correctly identifies all locators of record as of that time, the substitution or addition of subsequent transferees is the obligation of those who have acquired such an interest and their failure to participate in the hearing will not vitiate that hearing.

2. Mining Claims: Powersite Lands -- Mining Claims: Surface Uses -- Mining Claims Rights Restoration Act

Under the Mining Claims Rights Restoration Act of 1955, it is proper to prohibit all placer mining operations on a group of mining claims within land withdrawn for power development or powersites where unrestricted placer mining on such land would result in substantial interference with the use of land for other purposes. The Act gives the Secretary no discretion to permit limited or restricted placer mining on such withdrawn land. The

Secretary may permit either unrestricted placer mining or none at all.

APPEARANCES: Gregg M. Millar, pro se. 1/

OPINION BY ADMINISTRATIVE JUDGE STUEBING

Gregg M. Millar appeals from a May 18, 1983, decision of Administrative Law Judge E. Kendall Clarke, concluding that placer mining operations should be prohibited on Yuba I and Yuba II mining claims, CA MC 95657 and CA MC 95658. The claims are within a power withdrawal and mining operations thereon would substantially interfere with other uses of the land. Judge Clarke's decision was issued following a hearing held August 31, 1982, under the authority of the Mining Claims Rights Restoration Act of 1955, 30 U.S.C. §§ 621-625 (1976).

The claims were located by Dan Anderson and Clark Harris on June 18, 1981, and the location notices were filed with the Bureau of Land Management (BLM), on September 2, 1981. The claims through which the North Fork of the Yuba River flows, are located within land withdrawn under Power Project 187 of April 17, 1924, and are also within the Tahoe National Forest.

On March 18, 1982, BLM notified the locators that a hearing would be held pursuant to "Section 2 (b) of Public Law 359 in order to determine whether placer mining operations in connection with your claims would substantially interfere with other uses of the land included with the claims." Notice of the hearing date and location was sent by Judge Clarke and was received by the locators on July 28, 1982. On August 3, 1982, a quitclaim deed executed on July 7, 1982, by Anderson and Harris to appellant and others was filed with BLM. The deed was recorded with the Sierra County Recorder on July 28, 1982.

The scheduled hearing was conducted on August 31, 1982. Despite the nonappearance of either the original locators or the transferees, Judge Clarke proceeded with the hearing. Judge Clarke determined, based on the evidence presented by the U.S. Forest Service in that hearing, that placer mining claims Yuba I and Yuba II should be prohibited.

[1] On appeal, appellant claims that notice of the hearing was not received until after the hearing had been conducted. The record indicates that Judge Clarke transmitted a notice of the hearing date and location to appellant and the other transferees shortly after he had been notified that the rights to the mining claims had been transferred. Appellant alleges that he did not receive that notice until September 24, 1982.

1/ Gregg M. Millar states in the notice of appeal file with BLM, "I, Gregg Millar, and G. R. & R. V. Morrisette [sic] would like to appeal." The notice of appeal and the statement of reasons were signed solely by Millar. However, there is no indication that he is qualified under the rules of practice before the Department, 43 CFR 1.3, to represent others in an appeal before this Board.

The Mining Restoration Act and Departmental Regulations promulgated thereunder provide that the process for a hearing regarding interference by placer mining activities in a power withdrawal with other uses of the land is initiated by issuance of a notice of hearing to each of the locators within 60 days after the filing of the location notice under the Mining Restoration Act. 2/ 30 U.S.C. § 621(b) (1976); 43 CFR 3736.1(b). A notice establishing the time and place for the hearing must be served upon the locators not less than 30 days prior to the hearing. 43 CFR 3736.2(a).

The notice commencing the hearing process was delivered to the locators of record in March 1982, several months prior to the recorded transfer of the original locators' interest in the mining claims. Thus, appellants acquired an interest in claims that were already subject to the hearing process.

The Board previously considered the effect of interests transferred after receipt of notice of hearing in United States v. Powell, 52 IBLA 256 (1981), a mining claim contest involving similar service procedures, and held that where the complaint correctly identified all claimants as of that date, substitution or addition of subsequent transferees in a Government mining contest is the obligation of those who have acquired such an interest and their failure to participate will not vitiate the effectiveness of the subsequent adjudication. Moreover, in Johnson v. Udall, 292 F.2d 738 (D. Cal. 1968), the court held that although the complaint in a mining contest must name every locator possessing an interest therein in order to satisfy the process requirements, the critical date is not the date of the contest, but the date the process was initiated. Because both a mining contest under 43 CFR 4.450 and the hearing process under the Mining Restoration Act are both initiated by service upon each locator or claimant, the principles expounded in Johnson and Powell are applicable to service of the hearing notice under the Act.

Since BLM complied with the statutory and regulatory requirements for service of the notice, appellant, as successor to his transferors' interests subsequent to the commencement of the hearing process, is deemed to have had constructive knowledge of the hearing. If appellant was unaware of the hearing, it was because his predecessors-in-interest failed in their duty to disclose that the claims were subject to the upcoming hearing and the determinations made therefrom. Thus, appellant's pleading on appeal that he was uninformed about the hearing has no merit under the circumstances.

[2] The Mining Restoration Act provides for location of mining claims on lands withdrawn for power development or powersites. A person who files a placer mining claim may not conduct mining operations on the claim within

2/ Location of the claims was made on June 18, 1981. Section 2(b) of the Mining Restoration Act, 30 U.S.C. § 621(b) (1976), provides the Secretary of the Interior must initiate the hearing process regarding interference with other uses within 60 days after filing of a notice of location for a placer claim under the Act. See also 43 CFR 3736.1. However, the locators of the claims did not request that the location notices be treated as filed under the Act until Jan. 26, 1982. The notice of hearing was delivered to the locators of record within the designated 60-day period.

60 days after filing with BLM in order to give the Secretary the opportunity to decide whether a hearing should be held on the question of "whether placer mining operations would substantially interfere with other uses of the land included within the placer claim." 30 U.S.C. § 621(b) (1976). If the Secretary decides to hold a hearing, mining operations on the claim must be suspended until the hearing has been held and an appropriate order issued which

> shall provide for one of the following: (1) a complete prohibition of placer mining; (2) a permission to engage in placer mining upon the condition that the locator shall, following placer operations, restore the surface of the claim to the condition in which it was immediately prior to these operations; or (3) a general permission to engage in placer mining.

30 U.S.C. § 621(b) (1976); 43 CFR 3736.1(b).

At the August hearing, the U.S. Forest Service, the surface managing agency, offered testimony that placer mining activities would interfere with recreational use of the area, particularly scenic enjoyment. The claims are located near State Highway 49, a scenic route which affords the general public a picturesque mountain canyon view. The river is considered to be a high quality environment for trout stream fishing. Of prime concern, the Pacific Crest Trail, a national scenic trail, traverses the claims. The Love Bridge, immediately north of the claims and part of the trail, provides access to that segment of the trail traversing the claims. Both the bridge and the trail were constructed at considerable costs. Water diversion is another use which the Forest Service stated would be affected. The Lewis Water Company diverts water from the river at a headgate in the northern portion of the claims for domestic uses in nearby Sierra City, California.

In his statement of reasons, appellant argues that the section of river within the claims cannot be seen from the trail or from the highway. He also claims that swimming or other in-river uses are unlikely and that all the river, not just this portion, is open to fishing. According to appellant, since diversion of water from the river occurs upstream from the claims, such uses enumerated in the decision would be unaffected. Finally, appellant asserts that due to the terrain found within the area of the claims, only a small operation is practical.

We agree with Judge Clark's decision that mining activities on the claims would substantially disrupt recreational uses of the land. In doing so, we do not necessarily reject appellant's assertions that a small personal operation such as contemplated by him would not interfere with other uses of the land. The issue before us is not whether appellant's proposed mining operations would substantially interfere with other uses of the land, but rather whether unrestricted placer operations would so interfere. United States v. Weigel, 26 IBLA 183 (1976). As we have already noted, the Mining Restoration Act allows the Department only three alternative courses of action, and limited operation is not among those alternatives.

Although appellant asserts that a "practical" operation cannot be seen through the surrounding trees, no evidence was offered to rebut the conclusion

that unrestricted mining operations within the claim could involve such activities as building access roads or stripping away of trees, which would significantly disrupt the scenic and recreational value of the area. The reasons presented at the hearing demonstrate that the only action that will ensure protection and preservation of the other uses discussed is prohibition of placer mining activities within the mining claims. Appellant has not shown through his presentation on appeal that Judge Clarke's determination is erroneous.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision is affirmed.

Edward W. Stuebing
Administrative Judge

We concur:

Anne Poindexter Lewis
Administrative Judge

Franklin D. Arness
Administrative Judge
Alternate Member